The Solicitors' Journal

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CURRENT TOPICS

Courts (Emergency Powers) Act to Lapse

THERE will be few to mourn the passing of the Courts (Emergency Powers) Act, 1943, which is to be brought to an end in the near future. A statement issued by the Lord Chancellor's Office on the 2nd May announces that the Government have decided that there is no longer any justification for the continuance of the restrictions imposed by the Act of 1943 and that an Order in Council to give effect to this decision will be submitted to His Majesty in due course. There has been for some considerable time a widely held view that the formalities to obtain leave before exercising remedies such as distress, recovery of possession, etc., have long since become needless hindrances—a view which was strongly urged in THE SOLICITORS' JOURNAL more than fifteen months ago (see 93 SOL. J. 33) and was again pressed by a correspondent as recently as December last (93 SOL. J. 789). Attention is drawn to the fact that the Liabilities (War-Time Adjustment) Acts, 1941 and 1944, which provide for the adjustment and settlement of the affairs of persons financially affected by war circumstances, will expire on the same date as the Courts (Emergency Powers) Act, 1943, but will remain in force as regards any liabilities adjustment proceedings commenced, or any scheme of arrangement approved, before that date.

Solicitors' Costs on Compulsory Acquisitions

"I DOUBT very much whether even the Solicitor-General . . . appreciates the incredible chaos there is in our statutory procedure and throughout the legislation with regard to the payment of solicitors' charges in all forms of compulsory purchase and acquisition of land," said Mr. L. W. JOYNSON-HICKS in the House of Commons on 26th April during the Committee stage of the Distribution of Industry Bill. Mr. JOHN HAY had introduced an amendment to the Bill providing that the Board of Trade should pay the vendor's full scale of costs in respect of compulsory purchase under the Bill and under the principal Act, the Acquisition of Land (Authorisation Procedure) Act, 1946. The SOLICITOR-GENERAL said that if the matter had to be considered it should be considered in connection with the entire code of compulsory acquisition and dealt with accordingly in the appropriate type of general Bill, and the amendment was negatived. Mr. Joynson-Hicks declared that if any other Bill were introduced for the compulsory acquisition of land which failed to make satisfactory provision for the payment of a vendor's solicitors he would raise the matter again. A fuller account of the proceedings is given at p. 288, *post*.

Continuing Annuities: Estate Duty

The Board of Inland Revenue have announced that, following the decision of the Court of Appeal in *Re Duke of Norfolk's Will Trusts; Public Trustee* v. *Commissioners of Inland Revenue* (1950), 94 SOL. J. 209, they have reverted to the practice whereby, on the death of a person entitled for life to an annuity which continues after his death, or to a share of such an annuity, estate duty is claimed (under s. 1 of the Finance Act, 1894) in respect of the annuity, or the deceased's share thereof, as passing to the surviving annuitant or annuitants.

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Matrimonial Causes (War Marriages)

THE 1st June, 1950, has been named as the "appointed day" for the purposes of the Matrimonial Causes (War Marriages) Act, 1944, and in consequence it is only marriages celebrated between 3rd September, 1939, and 1st June, 1950, which come within the matrimonial jurisdiction of the High Court by virtue of s. 1 of that Act. The Act, it will be remembered, enables the High Court to entertain proceedings for divorce or nullity although the husband was at the time of the marriage domiciled outside the United Kingdom, provided the wife was immediately before the marriage domiciled in England. The order fixing the appointed day (Matrimonial Causes (War Marriages) (Appointed Day) Order, 1950: S.I. 1950 No. 672) also has the result that proceedings under the Act cannot be commenced later than 1st June, 1955, by virtue of the proviso to s. 1 (1).

Taxation: Gifts by Traders to Technical Colleges

CIRCULAR 217 issued by the Ministry of Education on 21st April, 1950, states that the Inland Revenue department has reconsidered the extent to which allowance can be made, in determining a trader's liability to income tax, profits tax and excess profits tax, for gifts of money or equipment or loans of equipment made by traders to technical, commercial or art colleges or schools, or other vocational educational establishments for the purpose of vocational education or research. With regard to gifts, etc., made for the training of traders' employees, money contributions towards current costs may be treated as an expense of the business. With regard to gifts of equipment, where the trader replaces the equipment which is the subject of the gift the difference between the cost of the equipment and the amount already allowed to the trader for taxation purposes in respect of its depreciation is eligible for treatment as an expense of the business for income tax, profits tax and excess profits tax. Where the equipment is not replaced allowance of the amount of such difference will not be due for excess profits tax but an allowance of the amount of the difference will be due for income tax in respect of a gift made on or after 6th April, 1946, and for profits tax in respect of a gift made on or after 1st January, 1947. With regard to loans of equipment, if the equipment remains the property of the trader, the usual allowance for depreciation will be given as if the equipment were being used by the trader. If a trader pays fees to a technical, commercial or art college or school or other vocational educational establishment, either for the training of his employees or for research which is related to his trade or to the class of trade to which his trade belongs, the payments are eligible for treatment as expenses of the business for income tax, profits tax and excess profits tax.

Contributions to Capital Costs

Under s. 29 of the Finance Act, 1946, contributions to the capital costs of approved technical institutions may be treated as expenses of a business for income tax and profits tax purposes, and the circular states that the Minister approves for the purposes of that section all technical, commercial and art colleges and schools which are either maintained by him or aided by him either through a local education authority or directly. He will also be prepared to consider on their merits applications for such approval from other establishments providing vocational education. In making a claim under s. 29 a trader should furnish the inspector of taxes with a statement from the college, school or establishment that it is approved for the purposes of s. 29 by the Minister of Education. A contribution to the capital cost of research is eligible for treatment as an expense of the business for income tax as from 6th April, 1946, and for profits tax as from 1st January, 1947, but not for excess profits tax, if the college is approved for the purpose of s. 27 of the Finance Act, 1944, by the Committee of the Privy Council for Scientific and Industrial Research and if the contribution was made on or after the 6th April, 1944. Numerous colleges listed in an appendix have been so approved and notified accordingly to inspectors of taxes. An application from any other college to be added to the list may be made to the Minister of Education and will be considered on its merits, provided that the college either undertakes or proposes to undertake research work for industry. The circular does not apply to universities and university colleges, but all universities and university colleges in Great Britain have been approved for the purpose of s. 27 of the Finance Act, 1944.

Coroners' Courts

MOST of the recommendations of the Departmental Committee on Coroners, said the HOME SECRETARY in the Commons on 27th April, could be implemented by legislation only, and he could not promise to introduce legislation on that difficult and controversial question in the near future. In reply to a supplementary question, Mr. EDE said that he had had negotiations with coroners on the matter, and he had found no point in discussions with them which was not controversial. It is, we submit, astonishing to find the word "negotiations" used in this connection, as though the public interest could possibly be the subject of a bargain with servants of the public. Members of the legal profession and members of the public alike will strongly sympathise with the view put forward by Mr. MARLOWE, K.C., in the form of a supplementary question, that "most of the controversy comes from the coroners themselves, and that it is in order to remove from them certain privileges which they are trying to safeguard that this House ought to act."

Recent Decisions

In *Ministry of Health* v. *Fox*, on 25th April (*The Times*, 26th April), WYNN PARRY, J., held that, although the trust deeds of a maternity hospital gave power to the trustees to apply funds of the trust for other charitable purposes, the hospital and its endowments nevertheless became vested in the Ministry of Health under ss. 6 (1) and 7 (4) of the National Health Service Act, 1946, because at the vesting date (5th July, 1948) the premises and funds of the hospital were being used solely for the purposes of the hospital.

In *Turburville and Another* v. *West Ham Corporation*, on 28th April (*The Times*, 29th April), the Court of Appeal (LORD OAKSEY, SINGLETON, L.J., and WYNN PARRY, J.) held that resolutions that school teachers employed by the defendants who might be called up for service with H.M. Forces might have their pay under such service augmented to the amount of the salary they received at the date of call up together with "such increments, if any, of their grades which they would otherwise have received" referred not only to annual increments, but also to increases under the Burnham Scale, that the fact that the Burnham Committee might have taken into account the increased cost of living was neither relevant nor proved, and that the action of the plaintiff school teachers to enforce the resolutions was not barred by s. 21 of the Limitation Act, 1939, because the payment was not for the benefit of the public but for the benefit of the employees, and therefore an action could be brought although more than one year had elapsed from the date when the cause of action occurred.

BUSINESS EFFICACY

WHEN dealing with a dispute regarding the interpretation of a contract the court will, whenever possible, avoid a construction which would render the contract invalid, and prefer a construction upholding the agreement of the parties, thereby giving it business efficacy. This problem often arises in connection with the question whether a term ought to be implied into the agreement of the parties, as was pointed out by Lord Wright in *Luxor (Eastbourne)* v. *Cooper* [1941] A.C. 108, at p. 137 :—

> " It is agreed on all sides that the presumption is against the adding to contracts of terms which the parties have not expressed. The general presumption is that the parties have expressed every material term which they intended should govern their agreement, whether oral or in writing. But it is well recognised that there may be cases where obviously some term must be implied if the intention of the parties is not to be defeated, some term of which it can be predicated that ' it goes without saying,' some term not expressed but necessary to give to the transaction such business efficacy as the parties must have intended."

The doctrine of business efficacy is frequently invoked in connection with trade restrictions such as quotas and licences, the necessity of which is present in the minds of both contracting parties, and yet it has not been expressly referred to in their agreement.

Two cases, a recent and an earlier decision, illustrate the application of that doctrine, namely, *K. C. Sethia* (1944), *Ltd.* v. *Partabmull Rameshwar* (1950), 94 SOL. J. 112, and *Re An Arbitration between The Anglo-Russian Merchant Traders, Ltd. and John Batt & Co. (London), Ltd.* [1917] 2 K.B. 679. The facts of the *Sethia* case were as follows : The sellers sold jute for export from India to Italy. The export of jute was regulated by a quota system, and the sellers had no quota for Italy. Eventually, however, the sellers shipped a small quantity—less than one-third of what they had contracted to supply. The buyers claimed damages for breach of contract by non-delivery of the quantity stipulated, and the sellers argued that a term should be implied in the contract to the effect that the contract was subject to the requisite quotas and licences being available. The Lord Chief Justice rejected this argument and awarded damages to the buyers, and the Court of Appeal upheld his decision. The earlier *Anglo-Russian Merchant Traders* case was referred to and distinguished in the *Sethia* case ; it concerned the sale of aluminium for export from Britain at a time when that was prohibited except on licence. Contrary to the course adopted in the later case, in the *Anglo-Russian Merchant Traders* case the court held that a term ought to be implied that the sale was subject to a licence being obtained. Viscount Reading, C.J., referring to the principle laid down by Bowen, L.J., in *The Moorcock* (1889), 14 P.D. 64, at p. 68, that " . . . the law is raising an implication from the presumed intention of the parties with the object of giving the transaction such efficacy as both parties must have intended that at all events it should have," held, with the approval of the other members of the Court of Appeal (Lord Cozens-Hardy, M.R., and Scrutton, L.J.) that, in order to give business efficacy to the transaction, a term had to be read into the contract that it was subject to a licence being obtained.

Where there is a contract of sale for which a licence is necessary, the court will readily imply a term to the effect that the contract is not to be operative unless a licence is obtained. Otherwise the contract would be illegal and the law will not imply an obligation to do something illegal. Such a contract will be construed subject to the existence of a condition, namely, that the requisite licence is available, failing which it will be void.

Where a system of quotas prevails the position is rather different. Questions concerning the application of the quota are purely within the knowledge of the particular vendor concerned. They may be said to be matters pertaining to the internal management of his business. Assuming the vendor entered into contracts for the supply of a quantity exceeding his quota, and subsequently failed to carry out that which he had undertaken, surely then the buyer will succeed in an action for damages, for how can he possibly know whether the vendor undertook to supply more than his quota ?

The rule which appears to emerge from the two above-mentioned cases may be stated as follows : If *both* parties know that the contract cannot produce an effect unless a provision which is not expressed therein is implied, then such further provision will be implied. But where a party, though knowing that a further requirement has to be satisfied, is entitled to assume that the other party will take it upon himself to satisfy that requirement, the courts are unlikely to imply a term into the contract.

For a term to be implied its provisions must have been, or be deemed to have been, in the contemplation of both parties. The position here is not dissimilar from that which arises in cases of mistake and frustration. But where business efficacy can be secured from a contract as it stands the court will never imply new terms which, as a rule, are likely to create what is in effect a new contract. Though it is of great importance that business efficacy should be secured, one must remember that the duty of the court is to consider the contract which the parties have concluded, and to give it its ordinary meaning.

The doctrine of business efficacy is not restricted to the interpretation of contracts. It might also apply to the measure of indemnity payable under a contract of insurance. In the case of *Irvin* v. *Hine* [1949] 2 All E.R. 1089, one of the disputes before the court was about the quantum of damages to be awarded to the owner of a damaged ship. The ship was stranded in 1942, but in any event the owner would not have been able to have her repaired until some time after the war. An insurance policy had been taken out in order to indemnify the owner of the ship should she suffer loss, and it is submitted that the contract of insurance would not really be *effective* if the possibilities of repair or replacement were not taken into account. The insurance policy itself did not, of course, refer to such a possibility (i.e., impossibility to repair at the time the damage occurred), and it was contended that the amount of damages should be the cost of repair at the time the damage was actually suffered. That would not render the indemnity effective, as the ship could not at that time be repaired. Devlin, J., rejected that contention, and said (at p. 1092) :—

> " In estimating the cost of repair for the purpose of partial loss, I think that the court has to get as near as possible to the actual figure which would have been expended had she been repaired, and, if it be proved . . . that she could not have been repaired earlier than the early part of 1947, I think I ought to take the figures appropriate to that time."

D. J.

Costs

PROBATE—II

WE considered in our last article the principles upon which non-contentious probate costs are compiled, and we will consider now the law and practice relating to contentious probate costs.

We have seen that non-contentious probate business is defined by s. 175 (1) of the Supreme Court of Judicature (Consolidation) Act, 1925, as being the business of obtaining probate and administration where there is no contention as to the right thereto, and any other probate and administration business or proceedings, not being business or proceedings in any action. It follows, therefore, that any other probate business must be contentious probate business, and it will be as well before proceeding further to ascertain what are some of the more common types of work that fall under this heading.

Perhaps one of the most usual forms of probate work in the courts is the proving of a will in solemn form. Thus, a will may be proved either in common form or in solemn form. The proving of the will in the former case is the ordinary non-contentious work of obtaining probate, whilst to prove a will in solemn form the matter is taken into court and the authenticity of the will is proved by evidence, and the judge, after hearing any interested parties, will pronounce for or against the will. If there is any irregularity about the execution of the will, for instance, the executor, for his own protection, may elect to have it proved in solemn form. The advantage of this is that once the will has been pronounced as valid by the court then it is irrevocable, with two exceptions with which we need not concern ourselves at the moment, whilst a will proved in common form is always liable to be contested and upset even after a considerable time has elapsed.

To take a further example, a testator may have executed a will with an obvious error in the date, and in order to prove the will in solemn form it will be necessary to call the witnesses to the will to give evidence under oath as to the precise date on which the testator executed the document. As we have stated above, even after probate has been granted in common form, any party whose interests in the estate of the deceased are adversely affected by the will may call upon the person who obtained probate in common form to prove the will in solemn form. For this reason, therefore, an executor of a will about which there is any doubt may elect to have the will proved in solemn form, and the cost of so doing will have to be borne out of the estate. This is so even where no question has been raised as to the validity of the will by an interested party, and the beneficiaries cannot object to the expense of having the will proved in solemn form, if the executor is so minded to adopt that course (see the old case of *Headington* v. *Holloway* (1830), 3 Hagg. Ecc. 280).

Note that in a case where the executor has the will proved in solemn form there is no need for him to obtain an order that the costs of so proving the will shall be paid out of the estate. He is entitled to such costs out of the estate as a right, and even where the order pronouncing the validity of the will is silent as to costs the executor is entitled to take his costs out of the assets of the estate coming into his hands. On the other hand, where an interested party to a will moves the court for proof of the will in solemn form, then, even where the court establishes the validity of the will, the interested party must obtain an order if he is to receive his costs out of the estate. If the order is silent as to costs, then the interested party who moved the court will have to bear his costs himself.

Another common form of contentious probate business is the opposing of a will. Thus, a person interested in the estate of a deceased person may oppose a will on the ground of the testamentary incapacity of the testator, where it is alleged that he was not of sound mind at the time when the will was executed; or it may be opposed on the ground that the testator was under the influence of another person at the time when he executed the will.

Now the general rule as to costs in contentious probate actions is that such costs follow the event. In short, the party who fails pays the opposite party's as well as his own costs. This rule is not, however, inflexible, and, indeed, s. 50 of the Judicature Act, 1925, expressly provides that the costs of and incidental to proceedings in the Supreme Court, including the administration of estates, shall be in the discretion of the court or judge, who shall have full power to determine by whom and to what extent the costs shall be paid.

There is one instance where the interested party may take steps to ensure that he shall not be liable for the costs, and that is in the case of a person who opposes a will and insists that it be proved in solemn form. In that case he may, under R.S.C., Ord. 21, r. 18, give notice that he merely insists on the will being proved in solemn form and that he only intends to cross-examine the witnesses, and in such case he will not be condemned in the costs, even if he is unsuccessful in opposing the will. He must give the notice under the above rule at the time when he delivers his defence. There is, however, one important proviso to this, namely, he must satisfy the judge that he acted reasonably in opposing the will. If he acted unreasonably, as where he had no real grounds for supposing that the will was invalid and only opposed it in order to hamper and obstruct the executor, then the notice under Ord. 21, r. 18, will not save him from being condemned in the costs incurred by the executor in proving the will in solemn form.

Since, as we have seen in the previous article, contentious probate business was transferred firstly from the old ecclesiastical courts to the Court of Probate, and subsequently to the Supreme Court, it follows that the rules of the latter now apply to contentious probate business, with the result that the scale of costs is regulated by R.S.C., Ord. 65 and Appendix N. It will be noticed, however, that R.S.C., Ord. 65, r. 27 (37), provides that the rules, orders and practice relating to costs of any court the jurisdiction of which is transferred to the High Court of Justice, and the allowances and fees of solicitors, and the taxation of costs, existing immediately before 1st November, 1875, shall so far as they are not inconsistent with the rules of the Supreme Court, remain in force and be applicable to the same or analagous proceedings.

In compiling a bill of costs in respect of contentious probate work reference will, in the main, be made to Appendix N of the R.S.C. for the scale of fees. However, certain items met with in this class of work will not be found in Appendix N, and the solicitor will then have to refer to the table of costs allowed to proctors, solicitors and attorneys practising in the Court of Probate and annexed to the order of the Court of Probate dated 30th July, 1862, which, it is appreciated, will not now be readily available. There are not, however, many items which cannot be found in Appendix N and for which reference must be made to the table of 1862. The principal items include a citation, the fee for instructions in respect of which is allowed at 6s. 8d. and for the preparation thereof 7s. 6d. The allowances for attending, lodging, copying and

serving will, of course, be taken from Appendix N. Another item for which no allowance will be found in Appendix N is a case on motion, a form of proceeding used to obtain a grant of letters of administration where the person normally entitled to such grant has neglected or refused to take the necessary steps. The allowance under the table for a case on motion is 10s., including a copy for the judge, whilst if it exceeds seven folios in length each additional folio may be charged for at 1s. 4d. Apart from these instances, all other items met with in a contentious probate bill of costs will be found in Appendix N.

It frequently happens in administration actions that there are a number of parties in the action separately represented. This may arise because of disputes between persons entitled to share in the estate with the result that their interests clash. In such cases, each of the parties represented at the hearing may be given their costs out of the estate, if their appearance in the action was reasonable and proper. It follows that cases may arise where there are three or four sets of costs to be taxed in an action. Since all the parties are interested in the estate and, therefore, in the amounts to be paid out of it, they are all entitled to attend the taxation of each other's costs, and in these cases it is convenient for all of the costs to be taxed at the same time.

Contentious probate costs are taxed in the Registry, and the procedure is much the same as in the case of the taxation of costs in Admiralty matters. The bill is copied in the normal way in High Court matters, that is, it is copied on both sides of foolscap paper, with a cash column on the left-hand side and two cash columns on the right-hand side. The left-hand column is, of course, for the amounts taxed off, whilst the first of the right-hand columns is for the disbursements, and the outside right-hand column is for the professional charges. The bill must be cast before being lodged in the Registry, each page being cast separately, and the total of the pages must be carried to a summary at the end.

In due time the Registrar will give notice by post of an appointment to tax, and it is then the duty of the person whose bill is being taxed to give notice to the other parties entitled to attend the taxation. Quite frequently, in order to save time and expense, the other parties, where there are several, will appoint one of their number to attend the taxation. Note that any person who is interested in the residue of an estate is entitled to attend the taxation of costs to be paid out of the residue, although he may not be a party to the action.

After the taxation the representative solicitors will agree the amount of the bill as taxed, and it is then lodged in the Registry where the allocatur is drawn. The usual rules, with which we have dealt, as to objections to taxation and review apply.

An important point to note is that the one-sixth rule (R.S.C., Ord. 65, r. 27 (38B)) will apply here, so that if more than one-sixth of the bill is taxed off then the solicitor whose costs are being taxed will lose the costs of drawing, copying and taxing his bill.

J. L. R. R.

A Conveyancer's Diary

CONSIDERATION AND EQUITABLE ASSIGNMENT OF CHOSES IN ACTION—I

THE question which I propose to consider in this and the succeeding articles under this heading is whether consideration is required to support an equitable assignment of a chose in action. The point is of some considerable importance to trustees, but as the authorities are in a state of some confusion, it is impossible to reach any clear conclusion on the question; all that is possible is to point to the danger of accepting, without further examination, certain propositions which appear in some of the books. It is, however, only fair to say that most writers express their opinion on the question with a becoming caution.

This question concerns equitable assignments only, the statutory or legal assignment of choses in action being different from assignments recognised in equity only in respect of this matter of consideration as also in several other respects. It is well known that the common law steadfastly refused to recognise the assignment of any legal chose in action, e.g., of a debt, with the result that in the absence of some sort of tripartite arrangement amounting to a novation the only person who could bring an action for debt or any analogous action at law was the original creditor or his representative. This state of affairs had the merit of simplicity, but it could not continue indefinitely in a mercantile and propertied society, and the strict rules of the common law in consequence came under the pressure of two separate influences which gradually whittled away their somewhat outmoded severity. One of these influences was the law merchant, under which the assignability of negotiable instruments came to be recognised. The other was equity, which began by recognising and enforcing the assignment of equitable choses in action, and ended by giving effect to assignments where the subject-matter was not an equitable, but a legal, right.

In the case of an assignment of an equitable chose in action no procedural difficulties stood in the way of the assignee who went to equity to enforce his right; for example, if A was entitled to a share in a trust fund which was vested in T, he could assign it informally to B, and thereupon B could, as he still can, bring proceedings in equity in his own name against T for the payment over to him of the share which had been assigned to him. But if the subject-matter of the assignment by A to B was a debt owed to A by X, the only person in whose favour judgment would be given in a court of law against the debtor X was A, and if A refused to lend his name to B for the purpose of bringing an action against X at law, the only way in which equity could assist B to enforce his right against X was to restrain A from objecting to the use of his name for this purpose by his assignee, B (see, e.g., *Re Westerton* [1919] 2 Ch. 104, 111).

This was the position until s. 25 (6) of the Judicature Act, 1873, came into force. This section, which is now reproduced in s. 136 of the Law of Property Act, 1925, provides in effect that any assignment by writing under the hand of the assignor of any debt or other legal chose in action which is absolute and does not purport to be by way of charge only, and of which express notice in writing has been given to the debtor, is effectual in law to pass to the assignee the legal right to the debt or chose in action, with the right to recover the same and to give a good discharge therefor without the concurrence of the assignor. Now this provision makes no reference to consideration, and it is clear from its terms, and has been so held, that consideration is not necessary to

enable the assignee under an assignment made in accordance with the statute to sue the debtor at law in his own name (*Re Westerton, supra*, at p. 114). Having said that, it should not be necessary to say anything further of statutory, or legal, assignment of choses in action, except in so far as such assignments are sometimes considered in passing in cases dealing primarily with the effect of assignments valid only in equity.

For the statute did not in any way affect such assignments, except that procedurally the fusion of law and equity has made it possible for the equitable assignee of a legal chose in action to enforce his remedy against the debtor in one action (in which the assignor is now joined as a co-plaintiff if willing, or as a co-defendant if not), instead of having to take the separate steps of a suit in equity against his assignor, followed by an action at law against the debtor, which were necessary before 1876. The equitable assignee of an equitable chose in action has now precisely the same rights and remedies, no more and no less, that such an assignee enjoyed before the Judicature Act came into force.

These preliminary remarks over, it is possible to turn to the main question, and on this question the prevailing trend of opinion seems to be that no consideration is required to support an equitable assignment. In this respect the important element of difference between law (or statute) on the one hand and equity on the other lies in the nature of the assignment, not in the nature of its subject-matter; and it has never been suggested that consideration may be required to support an assignment in equity of a legal chose in action (e.g., an assignment of a debt which fails for some technical reason, such as want of notice to the debtor, to take effect under s. 136), but not in the case of an assignment in equity of an equitable chose in action (e.g., a share in a trust fund), or *vice versa*. It is therefore permissible, as well as conducive to clarity of exposition, to speak simply of "equitable assignments of choses in action," as has been done above, without particularising the nature of the chose in question.

There are two books to which the practitioner turns for immediate assistance when confronted with some difficult point connected with equitable principles—White and Tudor's Leading Cases in Equity and Snell's Principles of Equity. Both these works suggest that the answer to the question posed above is that consideration is not necessary. Thus in White and Tudor (9th ed., vol. 2, at p. 899) it is stated, after reference to s. 136, that although a legal chose in action is now legally assignable, it appears that a voluntary assignment not complying with that section but valid in equity will operate as a perfect gift. The relevant passage in Snell (23rd ed., p. 59) states that value is necessary for an equitable assignment of rights of property not yet in existence (as to which there is no doubt at all, since such a transaction is regarded not as an immediate transfer of property, there being no property to transfer at the time of the transaction, but as a contract to transfer the property in question when it should come into existence, and to be susceptible of specific performance contracts are always required by equity to have been made for valuable consideration: *Re Ellenborough* [1903] 1 Ch. 697); but that is another question, and in reference to other equitable assignments it is stated in Snell that value does not appear to be required, provided that the assignor has done everything which is necessary to be done on his part to transfer the chose in action to the assignee—i.e., provided that the assignment does not fall foul of the principle, expounded once more and followed in the recent case of *Re Fry* [1946] Ch. 312, that equity will not perfect an imperfect gift. The passages from both these authorities are supported by reference to cases, the examination of which must wait till next week.

"A B C"

Landlord and Tenant Notebook

COVENANT NOT TO SUFFER NUISANCE: IMPUTATION OF KNOWLEDGE

THE issues raised in *Borthwick-Norton* v. *Romney Warwick Estates, Ltd.* [1950] 1 All E.R. 362; *ibid.* 798 (C.A.), were not kept as clearly defined as might be desired, but the gist of the decision is reasonably clear. A tenant breaks a covenant not to suffer something if he ought to know that that something is happening—and, presumably, can do nothing to stop it. Whether, according to the new authority, he also breaks a covenant not to use premises in a particular way if his sub-tenant so uses them and he (the mesne tenant) can do or does nothing to stop it is not so clear.

The sequence of events in the case is of some importance. The defendant company acquired, on 21st June, 1947, the residue of a lease of a house, the lease having some twenty-seven years unexpired. The assignor was one of the directors of the company (she had held the lease since 1938), her son being her only co-director and chief shareholder. The lease contained lessee's covenants, fortified by the usual proviso for re-entry, (1) not to do or suffer to be done on the premises any act which might be, or might grow to be, an annoyance, damage or disturbance to the Ecclesiastical Commissioners, for whom the plaintiffs were trustees, or the trustees (which I will call the covenant against nuisance), and (2) to keep and use the premises as and for a private dwelling-house only (which I will call the covenant restricting user). The house was divided into flats: this surely would be a breach of the covenant restricting user (*Day* v. *Waldron* (1919), 88 L.J.K.B. 937, but not necessarily a breach of that against nuisance: *ibid*; nothing was said about this, and it was not covered by the forfeiture notice, so it may have been waived). Some time after the assignment the company let the top flat to a tenant who was or became a prostitute. The letting was negotiated by one director and complaints were received from other tenants by both directors to the effect that the top flat was being used for immoral purposes, but the complaints were not investigated and were ignored.

Complaints were then made to the police, who kept observation on the premises, which were being used by two women for immoral purposes, and on 30th August, 1948, the tenant was convicted of knowingly permitting the flat to be used as a brothel, under the Criminal Law Amendment Act, 1885, s. 13 (2). The company, according to their evidence, were notified of this conviction on 13th September and gave the tenant notice to quit the very next day: she left on 25th September. On 19th October the plaintiffs served a forfeiture notice stating that the company had done or suffered to be done on the premises an act which was an annoyance, etc., and that they had not used the messuage as a private dwelling-house only, in that they had used or

suffered the same or part thereof to be used during 1948 as a brothel contrary to the above-mentioned enactment. It will be observed that the notice referred to doing as well as to suffering to be done, to both the covenant against nuisance and to the covenant restricting user; but the main issue in the case was whether the defendant company had known what was going on, their counsel admitting that if they had they had broken the covenant against nuisance.

Hilbery, J., held that the directors' failure to take sufficient steps to verify or dispel the allegations made to them was a wilful shutting of eyes by which knowledge was to be imputed to them and thus to the company; and the counter-claim in the alternative for relief had, of course, little prospect of success in view of *Egerton* v. *Esplanade Hotels, London, Ltd.* [1947] 2 All E.R. 88 (see 93 SOL. J. 690). In the Court of Appeal attention appears to have been directed to the question whether the finding that eyes had been deliberately shut was justified, rather than to that of the consequent imputation; it was held unanimously that the inference of fact was justified, and an appeal against the refusal of relief was curtly rejected.

There is, perhaps, not much that is new about this decision; but some features provoke reflection. There is, for instance, a sentence in the judgment of the Court of Appeal delivered by Lord Goddard, C.J., which runs: "If until that time [the time when direct notice of the conviction was received and notice to quit served by the appellants] they had had no knowledge that the premises were being used as a brothel, they would have been entitled to succeed in the action, and no question of the exercise of discretion would have come into the matter." (This occurs, incidentally, in a passage dealing with relief, the court considering that the question of breach and that of relief stood and fell together.) As the action was fought, everything indeed turned on knowledge, but it must not be assumed that proving knowledge on the part of a covenantee will always establish sufferance by a covenantor. In the recent case, the statement of facts warrants the conclusion that the sub-tenant was a weekly tenant; moreover, the fact that she happened to carry on the particular nuisance in association with another woman and thus made the premises a brothel (*Singleton* v. *Ellison* [1895] 1 Q.B. 607; see *per* Denning, L.J., *Fredk. Platts Co., Ltd.* v. *Grigor* [1950] W.N. 194) would have given the appellants a right to make her assign her tenancy to an approved person or to determine it under a later enactment, the Criminal Law Amendment Act, 1912, s. 5. But for these facts, the lessors might have been in a difficulty in establishing a breach of this particular covenant; the covenant as cited did not provide that no act, matter, or thing whatsoever should at any time during the term be done on the premises which might be or tend to be an annoyance to, etc., as did the second limb of the covenant examined in *Prothero* v. *Bell* (1906), 22 T.L.R. 370 (the first part dealing with carrying on and permitting such things); in that case it was held that the lease was liable to forfeiture on annoyance being proved whether the lessee was privy to it (she was found not to be) or not and though she had not repeated the covenant in the sub-lease (see *Wilson* v. *Twamley* [1904] 2 K.B. 99 (C.A.)). The lease in *Borthwick-Norton* v. *Romney Estates, Ltd.* appears to have confined itself to suffering things to be done, without specifying permitting them to be done; since the decision in *Barton* v. *Reed* [1932] 1 Ch. 362, we have at least an *obiter dictum* to show that there is a distinction. According to Luxmore, J., "suffer" is wider than "permit"; the learned judge had no occasion to, and did not, pursue the matter very far, and I would respectfully suggest that if this had to be done one might arrive at a difference in nature rather than in scope: "to permit" would mean to sanction the inception, "to suffer" would mean to fail to put a stop to it. Thus a covenantor obliged only not to permit, who would not commit a breach unless in some way aware of what his sub-tenant proposed to do (see *Tritton* v. *Bankart* (1887), 56 L.T. 306), would not, unless he could bring about its cessation, be guilty of suffering the act objected to unless he had the right to do this.

It would follow that if the sub-tenancy abused in the recent case had not been so easily determinable, the plaintiffs might have failed; nor would it have been possible for them to establish that the defendant company had broken their obligation not to "do" any act which might be or grow to be an annoyance, etc., or to keep and use the premises (if breach by mere sub-division had been waived) as and for a private dwelling-house only.

R. B.

EMMET ON TITLE—VOL. II

IN February last year (93 SOL. J. 96) the writer had the privilege of reviewing the first volume of a new edition (the 13th) of Emmet on Title published by The Solicitors' Law Stationery Society, Ltd., under the editorship of Mr. J. Gilchrist Smith, LL.M., Solicitor (Hons.). The second volume, also under Mr. Gilchrist Smith's editorship, is now available, the price for the two volumes being £6 10s. net. It is the intention of the editor and the publishers to issue from time to time during the useful life of the edition supplements keeping the work up to date in respect of matters arising after the 12th October, 1949. It is the law as at this date which is stated in Vol. II, and Vol. II contains addenda and corrigenda to Vol. I bringing the law in that volume also up to this date.

Among those who will read this review will be those who have already subscribed to Vol. I, and will therefore have been supplied automatically with Vol. II, and those who are strangers to the work, or at any rate to this edition of it. The former will already be aware of the very high standard which Mr. Gilchrist Smith set himself in Vol. I; this standard has been ably maintained in the second volume. The concluding paragraph of the review of the first volume recommended the inclusion of the work in the library of every solicitor who practises conveyancing; to those who are strangers still the writer would say that the result of the completion of the work is a full endorsement of this recommendation, and, in particular, to emphasise the writer's statement that "'An Encyclopædia of Conveyancing Law and Practice' would be a more apt title, for the book covers all aspects of conveyancing." This will be seen in the succeeding paragraphs.

Volume I contains most of the rules applicable to a sale of a fee simple estate; Vol. II deals with special aspects of conveyancing practice. Thus, by way of example, it contains chapters devoted to Settled Land, Leases and Tenancies, Mortgages, Town and Country Planning, Wills, and Trusts and Trustees.

It is in a chapter such as that on Leases and Tenancies that the encyclopædic character of the work is revealed. Thus it contains a selection of cases on exercising an option of renewal, a discussion on the length and phrasing of notices to quit with practical advice on service, a full discussion of the passing of the benefit and burden of covenants, and detailed comments on individual covenants, e.g., the meaning of a covenant to pay "outgoings" and the construction and effect of covenants to repair. This character is also revealed in the manner in which town and country planning is dealt with. Besides the general chapter on this subject, the chapters on Settled Land, Leases, Mortgages and Wills each contain extremely helpful

advice as to the effect of town and country planning law on their particular subject-matter; and this is advice which will be helpful to the conveyancer as much in his capacity of draftsman as in that of peruser of titles, for his attention is drawn to special clauses (with references to precedents) to be inserted in the documents concerned to get over difficulties caused by the new legislation.

On the impact generally of the new town and country planning law on conveyancing practice the editor remains of the opinion, which he expressed in the first volume, that no great change in this practice is rendered necessary by the 1947 Act and that user is not a matter of title. This seems to the reviewer to represent the more practical of the two schools of thought on the subject, and, indeed, the correct one; this is reinforced by the practice in regard to registered land noted on pp. 1283–1284, which does not allow of entries in the register as to permitted user. The various alterations in the National Conditions of Sale and The Law Society's General Conditions of Sale to deal with planning matters are set out and annotated.

As another example of the practical use of this book to a draftsman, the reviewer would like to quote an introductory paragraph from Pt. 3, which is headed "General Rules affecting Wills," of the chapter on Wills. This paragraph is quoted not only because of its bearing on its own context but because it epitomises much of the spirit of the book:—

"There are quite a number of points in connection with wills which are constantly recurring, and which every solicitor is supposed to be familiar with, but which it is quite easy to overlook in the hurry of business. It is only points of this class which are here dealt with; in other words, practical points. The suggestions made in these notes have been made with a view of preventing wills being drawn so that abstruse points will arise in the construction of them."

The only subject which the reviewer found wanting in the first volume, namely, sales of ecclesiastical land, glebe land and parsonage houses, is included in the new volume under the heading "Church Lands," at the end of the chapter on Trusts and Trustees.

The concluding chapter deals with registered land in the space of little more than thirty pages. It is, of course, by no means unusual to find this subject near the end of a general work on conveyancing. This is no disrespect to the subject, because a prior knowledge of ordinary conveyancing practice is essential. If it was hoped that registration of title would be a means of dispensing with solicitors' services, it is now surely clear that it is unlikely to do this; it in no way dispenses with what is perhaps nowadays the most onerous part of a purchaser's solicitor's duties, namely, pre-contract inquiries and the settling of the contract. The editor states as his most difficult problem the delimitation of the contents of the chapter on Registered Land, but he has succeeded in presenting a concise statement of the principles, with as much practical advice as will be required by most solicitors, without overloading the chapter.

A combined index to both volumes completes a work of outstanding value to conveyancers.

R. N. D. H.

HERE AND THERE

ACCOMMODATION WANTED

"REGULARITY of habits, rest, security and the slower pace of life far outweigh any effects of unhappiness." Men, it appears, come out far more healthy than they enter because they have no problems like being fired and no life of struggle. Who am I quoting? Dr. Sweet. And to what Lotus Land is he alluding? To Sing Sing Prison, of which he is senior physician (though it might just as easily be a hand-out for the Welfare State). Still, he's got something there. The only gaol I've ever been in is Gloucester and that was as a visitor a little before the war; it struck me then that if ever I wanted a brief respite from the turmoil and the strife of normal existence, a pause in semi-monastic surroundings for congenial study and meditation, I could do a lot worse than commit a small offence somewhere in the neighbourhood—provided I was not defeated by my previous good character, or else by some bothersome technicality, as in the case of the gentleman who has lately been hammering in vain on the implacable gates of Durham Prison, begging to be allowed to do the six months' imprisonment awarded to him by the Bishop Auckland magistrates. The magistrates had afterwards changed their minds and committed him to quarter sessions for another (and presumably, in their expectation, heavier) sentence. But at quarter sessions the Recorder would have none of him, as he was already a sentenced man. The Home Office said it was a matter for the magistrates. The clerk to the magistrates referred to the Director of Public Prosecutions. The prisoner twice applied to begin to serve his sentence. The Governor sent him away. Had he tried to force his way in *vi et armis* he would apparently have been committing some offence akin to prison-breaking in reverse. This rather topsy turvy tale, which might well have appealed to Cervantes, has an appropriate twist at the end. According to the latest advices, the hero of it proposes to ride south (pedal cycling, for this is not an age of horsemanship), take ship for Portugal, ride into Spain and at Corunna find the hitherto unseen Dulcinea, to whom, knight-errant fashion, he has proposed marriage (or in modern idiom his girl pen-pal, contacted through a London international correspondents' bureau). She, however, awaits their meeting before she gives an answer.

FRUSTRATED SECLUSION

WHAT is the reverse of claustrophobia? I cannot remember. But whatever it is, it seems to be in the air just now. Of prison, it may be said, as the French cynic said of marriage, it is like a besieged fortress; those who are in want to get out and those who are out want to get in. In Italy there was lately the case of the Franciscan friar who offered himself to take the place of one of the political prisoners interned on the island of Procida near Naples. His religious superiors, no less than the temporal authorities, ignored the gesture, which had something the same antiquarian interest as the gauntlet and the appeal of murder in our own *Ashford* v. *Thornton*. In its proper historical context, no doubt, it seemed natural. At any rate, in that remarkable film of the life of "Monsieur Vincent" it struck no false note when he voluntarily took the place of the galley slave at the oar. In the case of the friar, he apparently thought to emulate the members of the Order of Mercedarians, whose purpose in the Middle Ages was to offer themselves as substitutes for Christian captives in the hands of the Turks.

FULL HOUSE

In English prisons the demand for admission seems to be so rapidly increasing, under the stimulus of the new Criminal Justice Act, that soon it will require a good deal of influence to obtain accommodation. The chairman of the Visiting Committee of Oxford Gaol recently reported that eighty-one prisoners were living three together in cells designed for one and that six warders slept in the gymnasium and two in the condemned cell. Presently, he suggested, there may not be room for the officers even in their improvised quarters and the prisoners will drive them into the street. Between the longer sentences imposed and the somewhat visionary character of those detention centres, remand centres, places of corrective training and the like to which, under the Act, prisoners could be sent if such places existed in sufficient bulk beyond the sphere of hopeful aspiration, hospitality in the prisons has become a virtue requiring not a little fortitude on the part of the hosts. Perhaps a touch of Irish casualness might help occasionally. A few years ago

there was a prisoner who was let out of Crumlin Gaol on parole to visit his sick wife. He was due back at 4.0 but returned at 5.0. He rang the bell. Warder: "What do you want?" Prisoner: "I'm a prisoner here." Warder: "Too late to-day." Prisoner: "But where am I to go?" Warder: "You'll have to go to an hotel." And to the hotel he had to go. Perhaps in a planned economy some such method of seconding might help to put the hotel industry on its feet. But from what we hear of some of our island caravanserais, the prisoners would still be clamouring for admission to the comforts of prison life proper.

RICHARD ROE.

NOTES OF CASES

HOUSE OF LORDS

RENT RESTRICTION: "TRANSFER OF BURDEN OR LIABILITY"

Seaford Court Estates, Ltd. *v.* Asher

Lord Porter, Lord Normand, Lord MacDermott and Lord Reid
27th April, 1950

Appeal from the Court of Appeal [1949] 2 K.B. 481; 93 SOL. J. 424.

A flat within the Rent Restriction Acts was let by the respondent landlords to the appellant tenant by a lease of 22nd September, 1943, at a rent of £250 a year payable quarterly in advance. That lease contained a number of covenants to be performed by the landlords which had been absent from a previous lease under which the rent was £175 a year. *Inter alia*, they covenanted to pay certain impositions other than rates and taxes, to repair the exterior of the house, to remove refuse, and, most important of all, to provide hot water, an onerous obligation at a time when the cost of fuel was rising and supplies precarious. The landlords claimed £62 10s., being one quarter's rent at that annual rate payable on 24th June, 1948, for the quarter beginning on that day. The tenant, who had been paying for a considerable time on that basis, set up that the landlords were not entitled to claim more than the standard rent, which was £175 a year. At that annual rate the proper quarterly rent would be £43 15s., £18 15s. less than £62 10s., the quarterly rent claimed on the basis of £250 a year. The tenant accordingly contended (1) that the landlords' claim for the quarter's rent should be reduced from £62 10s. to £43 15s.; and (2) that he was entitled to counter-claim for each of eleven quarters preceding 24th June, 1948, an over-payment of £18 15s., making £206 5s. in all. The county court judge found that the standard rent of the flat was £175 a year, awarded the landlords £43 15s. for one quarter's rent on this basis, and sustained the counterclaim for repayment of £18 15s. quarterly, not for eleven quarters as claimed, but for six quarters only, on which footing it totalled £112 10s., £68 odd being thus due on balance to the tenant. On appeal by the landlords and cross-appeal by the tenant, the Court of Appeal held that the landlords were entitled to succeed in their claim, not as to £43 15s. only, but *prima facie* as to £62 10s.; that the tenant's counterclaim failed except in so far as the county court judge might decide that the burden transferred was over-valued at £75 a year; and that in such an event he might evaluate the landlords' claim for one quarter's rent at something intermediate between £43 15s. and £62 10s. The tenant appealed.

Their lordships took time for consideration.

By s. 2 (3) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, ". . . any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which any dwelling-house is held are on the whole not less favourable to the tenant than the previous terms, shall be deemed not to be an increase of rent for the purposes of this Act."

LORD PORTER said that the object of s. 2 (3) was plainly to keep the balance even between landlord and tenant. Therefore, a comparison must be made between the letting under which the standard rent was fixed and the letting which added to or diminished the rent to the tenant. The Court of Appeal had correctly so decided in *Winchester Court, Ltd.* v. *Miller* [1944] K.B. 734. The question for determination therefore was whether the admitted increase of rent had been made in respect of a transfer to the landlords of any burden or liability previously borne by the tenant. If the terms of the two lettings were alone to be looked at, the landlords had manifestly undertaken certain liabilities or burdens for which they were not responsible under the earlier lease. Nevertheless, it was said on behalf of the tenant that, though certain additional liabilities had been placed on the landlords, yet they had not been transferred from the tenant nor were they previously borne by him or his predecessor. So far as the two main problems were concerned—namely, the outside repairs and provision of hot water—it was said on behalf of the tenant that the landlords in fact previously undertook those tasks and that therefore they were not previously borne by the tenant. If the only question were what in fact had been done, there would be truth in that contention, but in his view the question was not who in fact executed the work but who was liable to do it even though someone else actually performed it. By the earlier lease the tenant was liable at least for the outside repairs of his own flat. Although the landlords might in the past have fulfilled that obligation, it had to be borne in mind that at any moment they might have called on the tenant to perform his contractual duty, and it followed that the liability was always on the tenant though its performance was never in fact demanded. In those circumstances the burden was throughout *his* burden and previously borne by him; and so borne none the less though the landlords gratuitously performed it and had not insisted on the tenant's carrying out his contractual obligations. The rights of the parties were not altered by a gratuitous forbearance on the part of the landlord. With regard to the hot water, however, the tenant had a further argument: by the earlier lease the landlords, it was true, were under no liability to provide hot water, whereas under the new tenancy that provision was imposed on them; but it was maintained on the part of the appellant that no liability or burden was imposed on the tenant by either lease in that respect. A tenant, it was said, might, under the earlier letting, have provided hot water for himself or, if he wished, have done without it. No doubt, so it was argued, the landlords had undertaken a fresh burden; but that burden had not been transferred from the tenant or previously borne by him. In a flat of the character of that in question a tenant would normally and naturally supply hot water himself if it were not supplied by his landlord. The practical necessity of providing hot water, in his view, was a burden which the tenant had to bear under the old lease, and under the new his burden had been transferred to the landlord. Such an interpretation of s. 2 (3) followed both the wording and intention of the Act. It enabled the landlord to add something to the standard rent without that addition being deemed to be an increase, just as the tenant on his part would be entitled to have the amount of his rent reduced if the landlord after contracting under an earlier lease to supply hot water were to be freed from that obligation by a later one. In such a case it could not be said that a fresh burden had not been imposed on the tenant because it was his choice whether he would supply himself with hot water or be content to do without it. The Court of Appeal had made the right order.

The other noble and learned lords agreed. Appeal dismissed.

APPEARANCES: *Heathcote-Williams*, K.C., *John Stephenson* and *John Corley* (*Kennedy, Ponsonby & Prideaux*); *C. L. Henderson*, K.C., and *Michael Hoare* (*Griffinhoofe & Brewster*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

CONFLICT OF LAWS: GOLD BARS BELONGING TO FRENCH COMPANY DEPOSITED WITH BANK OF ENGLAND: POSSESSION AND CONTROL OF GOVERNMENTS: IMMUNITY

Dollfus Mieg et Cie S.A. *v.* Bank of England

Evershed, M.R., Somervell and Cohen, L.JJ.
6th March, 1950

Appeal from Jenkins, J. (93 SOL. J. 265).

Prior to the outbreak of the war, the plaintiffs, a French company, were the owners of sixty-four identifiable bars of gold which were deposited in a private vault in Limoges. The gold was seized by the Germans during the occupation and taken to Germany, but recovered by American troops. In January, 1946, an agreement was made in Paris between a number of allied governments, which dealt with various matters in relation to German reparation and contained provisions in regard to the restitution of monetary gold. In September, 1946, a Tripartite Commission was set up by the Governments of the United Kingdom, United States of America and France, to implement the provisions of the Paris agreement on monetary gold and, in pursuance of these arrangements, the sixty-four gold bars were sent in July, 1948, to the defendants, the Bank of England, to be placed to the credit of a gold set-aside account in the name of His Majesty's Treasury on account of the Governments of the United Kingdom, the United States of America and France. The plaintiffs sued the defendants for delivery of the sixty-four gold bars, an injunction and damages, and the defendants claimed immunity from process in the English courts on the ground that the gold bars were in the possession or under the control of foreign governments. Jenkins, J., allowing the plea of immunity, made an order setting aside the writ and staying all further proceedings. The plaintiffs appealed. During the hearing of the appeal it transpired that on various dates between 30th December, 1948, and 26th January, 1949, the defendants had sold thirteen out of the sixty-four bars; the normal practice of the defendants when gold was deposited with them was to ascertain the fine gold content of the bars deposited and to credit the customer with the quantity of ounces of fine gold discovered on assay; in the present case a special arrangement was made to segregate the sixty-four bars, but as no warning notice was attached to the bullion office records of the bars, the thirteen bars were sold and delivered to outside purchasers.

EVERSHED, M.R., said that in view of the course of dealing of the defendants, and their omission effectively to segregate the sixty-four bars in suit from the pool, those bars had at no relevant date, within any sensible use of the words, been in the possession or under the control of the three Governments. In the result, the whole basis of the learned judge's decision having been destroyed, the appeal must succeed.

SOMERVELL and COHEN, L.JJ., agreed that the appeal should be allowed.

Observations of Lord Atkin in *Compania Naviera Vascongada* v. *Cristina S.S.* [1938] A.C. 485, 490, discussed and explained.

APPEARANCES: *Sir Andrew Clark*, K.C., and *R. O. Wilberforce* (*Slaughter & May*); *Cross*, K.C., and *J. R. C. Lee* (*Freshfields*); *H. L. Parker* and *Denys Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

DIVORCE: COSTS AGAINST WIFE

Barker *v.* Barker

Bucknill and Somervell, L.JJ., and Vaisey, J.
13th March, 1950

Appeal from Mr. Commissioner Longland, K.C.

The commissioner refused to award the appellant costs against his wife on his being granted a decree *nisi* on the ground of her desertion, although she possessed adequate means. The husband appealed against that refusal. (*Cur. adv. vult.*)

BUCKNILL, L.J., said that he did not think that a divorce petition should be regarded as being in the same category as a writ of summons in a civil action; nor did he think that the rule of practice which required an unsuccessful defendant to pay the successful plaintiff's costs of obtaining a judgment necessarily or usually applied in the case where a husband obtained a decree of divorce. Until the decree was made absolute the woman remained the wife of the husband and he was *prima facie* responsible for her maintenance. He (his lordship) did not know of many reported cases in which the question had been considered whether the wife in an undefended divorce petition by the husband should be ordered to pay his costs in obtaining the decree. Although the court had complete power to make such an order without proof of separate means of the wife, in his opinion a judge would not exercise his discretion improperly if he refused to make it where the wife had done nothing to increase the husband's costs and there was no evidence that she had sufficient means to pay them. The costs of the hearing of a petition were required by law to be incurred before a decree could be pronounced. The court found some difficulty in inferring on what grounds the commissioner had exercised his discretion. To apply the words of Lord Sterndale, M.R., in *Ritter* v. *Godfrey* [1920] 2 K.B. 47, approved by Lord Cave, L.C., in *Campbell* v. *Pollak* [1927] A.C. 809, the commissioner here had deliberately intended to exercise his discretionary power, and had acted on facts connected with or leading up to the litigation which had been proved before him or observed during the progress of the case. In such a case the Court of Appeal, although it might deem his reasons insufficient and might disagree with his conclusions, ought not to interfere with the exercise of his discretion in a matter of costs. In connection with a possible reason for the refusal of costs, he (his lordship) wished to refer to the application of the rule in *Everitt* v. *Everitt* (1949), 93 SOL. J. 286; 65 T.L.R. 121, to the present case. Where there was no doubt that a spouse had committed adultery, but proof of it could not be obtained, it seemed from that decision that the innocent spouse might refuse to cohabit with the guilty spouse, and might at the end of three years petition for divorce on the ground of desertion. If that were the law, the court should require the deserted spouse to take all reasonable steps to obtain proof of the adultery and if possible bring a petition on that ground; for adultery was the solid basis of the decree, and constructive desertion in such a case was somewhat of a legal fiction.

SOMERVELL, L.J., and VAISEY, J., concurred. Appeal dismissed.

APPEARANCES: *D. Hyamson* (*Ashby, Rogers & Co.*). The wife did not appear and was not represented.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

LAND DRAINAGE: OBLIGATIONS OF CATCHMENT BOARD

Eton Rural District Council *v.* Conservators of River Thames

Vaisey, J. 19th April, 1950

Action.

By an agreement in writing made in 1908 the plaintiff council covenanted with trustees owning land in the district to keep certain ditches or watercourses draining water into the River Thames open, clean and free from obstruction, with the objects of disposing of effluent water from sewage works and of preventing floods. The benefit of the covenant was now vested in a company which had purchased the land. By the Land Drainage Act, 1930, s. 9 (1), a duty is imposed on every catchment board to take steps to commute any obligations imposed on persons by reason of "tenure, custom, prescription or otherwise" to do any work by way, *inter alia*, of maintaining watercourses in connection with the main river. The defendant conservators were a catchment board within the Act. The plaintiffs claimed a declaration

that the obligations of maintaining the ditches or watercourses, the subject of the agreement of 1908, which communicated with the River Thames, had passed to the defendants.

VAISEY, J., said the question turned on the precise construction of the words "by tenure, custom, prescription or otherwise" in s. 9 (1) of the Act. In his opinion the words "or otherwise" in the first context of the section must to some extent be construed according to the *ejusdem generis* rule. The words "tenure, prescription and custom" all indicated some obligation imposed on particular land, and for those reasons and not generally. The language of subss. (3) and (5), referring to owners of land and charges on land for moneys paid in commutation of obligations, confirmed the view that obligations under subs. (1) could not mean obligations of every kind, and therefore did not extend to such a purely contractual obligation as that created by the agreement of 1908. Similar words, together with "covenant or grant," were used in the Sewers Act, 1833, and it was significant that only words imposing an obligation on particular land should have been retained in the Land Drainage Act, 1930, and the words "covenant or grant" omitted. In his opinion the obligations created by the agreement of 1908 were obligations which the defendants had no right to commute, even if they were willing to do so. The subsection appeared to point to ancient obligations in connection with land, incidents whose origin was often lost in the obscurity of history. Section 9 of the Act was somewhat obscure, but appeared limited generally to obligations imposed on or created by reference to particular land. The matter was really concluded by the language of subss. (3) and (5). The result was that the action failed and must be dismissed but, if no notice of appeal was served, without costs.

APPEARANCES: *Milner Holland*, K.C., and *G. T. Hesketh* (*Sharpe, Pritchard & Co.*, for *G. L. Bridger*, Slough); *Kenneth Diplock*, K.C., and *R. H. Etherton* (*George E. Walker*).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

TOWN AND COUNTRY PLANNING: HIGHWAY STOPPED

Harlow *v.* Minister of Transport and Others

Birkett, J. 8th March, 1950

Appeal from a highways order.

The respondent, the Minister of Transport, purported, in exercise of his powers under s. 49 (1) of the Town and Country Planning Act, 1947, to stop up greenways across Dunstable Downs which were reserved to the public to walk on by a local Act of 1886 passed under the Enclosure Act, 1845. The second respondents, a limited company, were directed to provide new ways. By s. 118 (1) the Act of 1947 is to apply notwithstanding any existing enactment "authorising . . . any development of the land." This appeal against the order was by a person aggrieved by it.

BIRKETT, J., said that the principle for which the appellant contended (see *The Vera Cruz* (1884), 10 App. Cas. 68) was not really challenged by the respondents. It was contended for them that special powers were given to the Minister by the Act of 1947 which overrode the Act of 1886. That depended on the construction of s. 118 (1) of the Act of 1947. It was argued that the Act of 1886 was not overridden by the later Act because the provisional order and the award made under the earlier Act were not in fact concerned with the "authorising or regulating" of "any development of the land" within the meaning of the word "development" in s. 12 (2) of the Act of 1947. He was satisfied that ss. 118 and 12 (2) must be strictly applied. He did not think that what had taken place under the Act of 1886 came within the meaning of development in s. 12 (2) as being "the carrying out of building, engineering, mining or other operations," or that it amounted to "the making of any material change in the use of any buildings or other land." That being so, the Act of 1886 was not affected by s. 118 (1), and the order of the Minister must be quashed. Appeal allowed.

APPEARANCES: *Simes*, K.C., and *Hornby Steer* (*Dixon, Martell & Co.*); *Rowe*, K.C., and *H. L. Parker* (*Treasury Solicitor*); *Harold Williams*, K.C., and *W. B. Harris* (*Braby and Waller*, for *M. K. Smith*, Rugby).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

REQUISITIONING: COMPENSATION PAYABLE

Borthwick-Norton *v.* Collier

Hilbery, J. 14th March, 1950

Action.

A house was let in 1931 at £150 a year on a lease expiring in 1957. During the second world war it was requisitioned. It was de-requisitioned on 28th February, 1950. On 12th March, 1948, the remainder of the term was assigned. Compensation for damage to the house having become payable by the requisitioning authority under s. 2 (1) (*b*) of the Compensation (Defence) Act, 1939, to the "owner," the tenant-assignee claimed it as such. The landlords claimed to be the "owners." The question who was entitled to receive the compensation was directed by Master Horridge to be tried as an inter-pleader issue. By s. 17 of the Act of 1939 the owner is the person receiving the rackrent as defined in s. 343 of the Public Health Act, 1936. Rackrent is there defined as "a rent which is not less than two-thirds of the rent at which the property might reasonably be expected to be let from year to year." The tenant claimed to be entitled to the compensation as "owner," contending that £150 a year was not a rackrent at values obtaining on 28th February, 1948, and that he alone was in a position to let the house at a rackrent. (*Cur. adv. vult.*)

HILBERY, J., reading his judgment, said that for the tenant it had been argued that the question was who was the owner at the date of de-requisition, and that, since the owner was the person who received the rackrent, as defined, the tenant was the owner, because the premises at the date of de-requisition were not let by the landlords at a rent which was a rackrent at that date. Therefore the tenant, the assignee of the term, was the person who in those circumstances would be entitled to receive the rackrent if the premises were let at a rackrent. The tenant alleged that if the premises had been newly let on 28th February, 1948, the rent would have been much higher than that reserved under the existing lease. That had not been proved, and on that issue he (his lordship) preferred the evidence of the landlords as to rental values. The obvious intention of s. 2 (3) and the definition section was that the owner should receive the compensation, and for that purpose the owner was the person who received the rackrent. It was not denied that there was a letting at a rackrent at the date of the lease. A person who was receiving a rackrent at the date of de-requisition must be so receiving it under a prior lease. The landlords were receiving a rackrent at the date of the lease. Therefore they were receiving a rackrent at the date of de-requisition. They were accordingly entitled to the compensation in question. Judgment accordingly.

APPEARANCES: *Sir Shirley Worthington-Evans* (*Trower, Still & Keeling*); *Eric Sachs*, K.C., and *Astell Burt* (*Blount, Petre & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

STREET TRADING: REVIVAL OF RESCINDED DESIGNATION

R. *v.* Bermondsey Borough Council and Another; *ex parte* Leonard and Others

Lord Goddard, C.J., and Morris and Finnemore, JJ.
24th April, 1950

Application for an order of mandamus.

On 25th November, 1947, the respondent borough council passed a resolution designating Southwark Park Road as

a street-trading street, and licences were issued to the applicants, traders in the street. Before April, 1949, the borough council, without reference to the traders, made arrangements to open a market in a bombed-area site and persuaded the traders to give it a trial. On 26th April, 1949, the council passed a resolution rescinding the designation of Southwark Park Road as a trading street. The traders discovered that it was impossible to trade successfully in the new market. On 17th October, 1949, sixteen of them applied to the council under s. 16 of the London County Council (General Powers) Act, 1947, for the passing of a resolution designating Southwark Park Road as a trading street. By s. 16 (4): "If it is desired by" not less than 10 "persons . . . trading in a borough that any street in the borough in respect of which a designating resolution has not been passed should become a designated street those persons may . . . make application . . . for the passing . . . of a designating resolution in respect of that street." By s. 16 (6): "Any person . . . aggrieved by a decision of a borough council not to comply with any such application . . . may . . . appeal to the" Home Secretary. The council refused to consider the application made to them on the ground that the street was not one in respect of which a designating resolution had not been passed. The traders therefore now applied for an order of mandamus to be directed to the council and the Home Secretary in respect of their application for redesignation.

LORD GODDARD, C.J., said that the relevant words were a "street . . . in respect of which a designating resolution has not been passed," not "a street in respect of which a designating resolution is not in force." Here a resolution had been passed and had been rescinded. There must be some finality in the matter. Taking the section as a whole, he thought that it was intended that, if the borough council rescinded a resolution, the remedy of the applicants was by appeal to the Secretary of State. To be successful such an appeal must be brought within twenty-eight days as prescribed by s. 16 (6). The application would be dismissed.

MORRIS and FINNEMORE, JJ., gave concurring judgments. Application refused.

APPEARANCES: *G. G. Baker* (*Rye & Eyre*); *Gattie* (*F. Baldwin*); *Ashworth* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

WILL: ATTESTATION CLAUSE

In the Estate of J. Selby-Bigge, deceased

Hodson, J. 20th April, 1950

Probate summons.

The attestation clause used in a will and codicil was as follows: "Signed by the testator in our presence and attested by us in the presence of him and of each other." The registrar decided that the clause was insufficient because there was no reference to subscription, and made an order requiring, under r. 4 of the Principal Probate Registry Rules, an affidavit of due execution of the will and codicil. The executors and trustees named in the will and codicil applied that the will and codicil might be directed to be admitted to probate without the necessity of filing an affidavit of due execution in respect of either. In an affidavit the solicitors for the applicants stated that the form of attestation clause in question had to their own knowledge been used by their firm for nearly thirty years, and that from a search of the firm's records it appeared that it had been in continuous use since 1892. They could find no record that the attestation clause had ever been rejected by the Probate Registry as insufficient until the summer of 1949, when the ruling that it was inadequate was accepted under protest. They said that the firm had custody of some 800 wills of persons still living, and that there was a large number of other wills deposited elsewhere in which the same clause appeared. When the matter came before him, Lord Merriman, P., directed that the summons should be served on the Attorney-General and the matter be argued in open court.

HODSON, J., said that it was common knowledge that in the matter of the execution of wills and other documents reliance could be placed on the maxim *omnia praesumuntur rite esse acta;* but for common-form grants a safeguard was provided by the rules, and the official had taken the point that there was no reference to the subscription in the attestation clause, and that it was not sufficient to rely on the word "attest." It was clearly unnecessary in the attestation clause to cover every word in s. 9 of the Wills Act, 1837, and established books of precedents did not do so. The applicants contended that the word "attest" in the attestation clause was sufficient without the word "subscribe," reference being made to Blackstone's Commentaries, 4th ed., vol. 2, p. 260. "Attestation" in its primary meaning involved witnessing, and witnessing only; but when it was applied to documents it was now a reasonable construction of the word to say that it involved the act of writing. That was borne out by the language used in certain authorities, which clearly showed that the judges used the word attestation in that sense. In his opinion, the word "attest" was wide enough to cover "subscribe," and for that reason the wording of the clause which had been questioned was sufficient. He would make a declaration accordingly.

APPEARANCES: *Sir Walter Monckton*, K.C., and *Ifor Lloyd* (*Farrer & Co.*); *Victor Russell* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 27th April:—

Army and Air Force (Annual).

Dundee Corporation (Administration and General Powers) Order Confirmation.

Post Office and Telegraph (Money).

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Public Utilities Street Works Bill [H.L.] [25th April.

To enact uniform provisions for regulating relations as to apparatus in streets between authorities, bodies and persons having statutory powers to place and deal with apparatus therein, and those having the control or management of streets and others concerned in the exercise of such powers; to render such powers exercisable in land which abuts on a street and is destined for use for road purposes; to make further provision for regulating the closing or restriction of use of roads for the purposes of works and as to the use of alternative routes; and for purposes connected with the matters aforesaid.

South Staffordshire Water Bill [H.C.] [27th April.

Read Second Time:—

Public Registers and Records (Scotland) Bill [H.L.] [25th April.

Read Third Time:—

High Court and County Court Judges Bill [H.L.] [26th April.

In Committee:—

Colonial and Other Territories (Divorce Jurisdiction) Bill [H.L.] [25th April.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Finance Bill [H.C.] [26th April.

To grant certain duties and alter other duties, to make certain amendments of the law relating to purchase tax, to amend the

law relating to other branches of the public revenue or to the National Debt, and to make further provision in connection with Finance.

Read Second Time :—

Coal-Mining (Subsidence) Bill [H.C.]	[25th April.
German Potash Syndicate Loan Bill [H.L.]	[24th April.
Gun Barrel Proof Bill [H.L.]	[24th April.
Merchant Shipping Bill [H.C.]	[28th April.
Ministry of Health Provisional Order (Colne Valley Sewerage Board) Bill [H.C.]	[26th April.
Ministry of Health Provisional Order (South-West Middlesex Crematorium Board) Bill [H.C.]	[26th April.
Newfoundland (Consequential Provisions) Bill [H.L.]	[28th April.
Royal Patriotic Fund Corporation Bill [H.C.]	[28th April.
Saint John's Chapel Beverley Bill [H.L.]	[24th April.
Tees Conservancy Bill [H.L.]	[24th April.
Wear Navigation and Sunderland Dock Bill [H.L.]	[24th April.

In Committee :—

Distribution of Industry Bill [H.C.]	[26th April.

B. DEBATES

Mr. BOYD-CARPENTER moved an Address to the Crown for the annulling of the **Town and Country Planning (Grants) Regulations, 1950.** He drew attention to the fact that one part of the regulations required that, where land was to be acquired by a local authority for purposes connected with re-development schemes, provision of open spaces and so on, its acquisition would attract a grant from the Ministry only if the valuation of that land and the negotiations leading up to its acquisition were conducted by the district valuer. Members had had heavy posts from local government associations against this provision. Surely, if a borough had a town clerk and a surveyor who were familiar not only with the affairs of the area concerned, but also with the people with whom they were dealing, it was better that they should negotiate on behalf of their authority than that it should be done by some official from ontside ?

The grants were only percentage grants, and thus the local authority was debarred from dealing with its own money, and once the district valuer had made his valuation the authority had to accept it whatever it might think about it, for there was no conceivable means of appeal. Furthermore, in considering the future of land for planning purposes there were generally a number of alternative schemes under discussion at the same time ; the local authority's committee considering the matter ought obviously to have professional and technical advice available before making its decision, and that advice was not available from the district valuer but only from its own officers.

Seconding the Motion, Mr. THOMPSON said that the county boroughs at all events were well equipped to carry on these negotiations. The staffs concerned had to be maintained because there was still the responsibility of valuing, and negotiating, on land with the various other corporation departments. Mr. GIBSON, supporting the Motion, said there had in recent years been some redistribution of local authorities' functions which in some respects had tended to lessen their powers and responsibilities, although additional power had been given to them in other directions. He thought the provision would reduce the powers of local authorities so that they would cease to be live bodies attracting useful men and women to them.

In reply to the Debate, Mr. HUGH DALTON said that he had willingly met several deputations. One of these was led by Mr. Hayward, Chairman of the L.C.C., and all the local authorities' associations were represented. He had asked them to let him know what form of words would seem to them to safeguard their interests.

The reasons for the regulations in their present form was that very large sums of the taxpayers' money were involved in the matter. Only cases of " blight, blitz and dereliction " were involved and the regulations did not affect the acquisition of land for schools, houses, or other purposes. The grants were as much as 90 per cent. of the cost of acquisition in some cases, so that it was felt reasonable to ensure that the taxpayer did not have to pay an unduly high price for land acquired for public purposes. Moreover, 90 per cent. of local authorities had no local staff for these purposes and did in fact make use of the district valuer.

The deputation had subsequently asked him to exclude from the provisions of the regulations those local authorities which already had their own valuation staff, and to make a statement that, as regards the others, he would require the use of the district valuer only in such cases as he might from time to time decide. He had agreed, but he now felt that he could go further, and he undertook to introduce within a few days an amending regulation which would remove unconditionally the requirement that the district valuer should be required to conduct these negotiations for acquisitions and compensation. The local authorities had unanimously agreed to accept the condition that no grant would be paid unless a certificate as to value was given by the district valuer and the payment by the local authority was in accordance therewith.

Mr. BOYD-CARPENTER said that in view of the very clear and detailed assurance given by the Minister, it would be inappropriate to press the matter further, and he withdrew his Motion. [24th April.

On the Committee Stage of the **Distribution of Industry Bill** Mr. JOHN HAY moved an amendment providing that where the Board of Trade made a compulsory purchase of land under the Bill or under the Acquisition of Land (Authorisation Procedure) Act, 1946, it should pay the proper scale costs of any solicitor acting for the vendor. The present position was that when any public body bought land compulsorily the ordinary charges which a vendor would have to pay his solicitor did not apply. The only person who would benefit by his amendment would be the vendor, because he would be obliged to pay the same costs in any event.

Supporting the Amendment, Mr. JOYNSON-HICKS said he doubted whether it was appreciated that there was incredible chaos in our statutory procedure and throughout the legislation with regard to solicitors' charges in all forms of compulsory purchase and acquisition of land. It was high time the Government looked into the matter and arrived at that simple solution desired alike by all solicitors and all departments and authorities concerned with compulsory purchase, namely, that the solicitor should be entitled to be paid by the body which was compulsorily acquiring the land the same costs as he would be entitled to from his own client in the event of a private deal. There were some fifteen varieties of methods of compulsory purchase carrying a variety of methods of remuneration for the vendor's solicitor—all springing from s. 82 of the Lands Clauses Consolidation Act [1845], which was incorporated by reference into the present Bill.

Two separate legal opinions had been taken in order to try to elucidate the matter, but they were diametrically opposed. One was to the effect that a local authority was entitled to come to an agreement with the vendor that the local authority would bear the full-scale charges of the vendor. The other opinion was that it was illegal for the authorities to enter into such agreements, and they did so at the peril of being surcharged therefor. Hence many authorities would not take the risk and paid the lower scale charges only. Even on that scale they paid only the costs from the time of the preparation of the abstract of title. There was no reason why they should not pay the earlier costs. A third line of local authorities said, " We will compromise. If we think it is right and fair we will pay one scale or the other, but we will make our own minds up about it."

In reply, the SOLICITOR-GENERAL said he was not contending that the situation was satisfactory as it stood, but there had been negotiations between the Treasury Solicitor and The Law Society and an agreement had been arrived at that, in the case of voluntary acquisitions, the Government department would pay the full-scale costs of the vendor's solicitors, whether they were charged under Sched. 1 or Sched. 2. (He agreed that this only applied to cases where the Treasury Solicitor's writ ran—not, for instance, in the case of acquisitions by the Ministry of Health.) It was, however, impossible in this Bill, with its strictly limited objectives, to extend that provision to compulsory purchase. This was a matter of general principle which, if it was to be enacted, ought to be done in separate legislation.

Mr. MANNINGHAM BULLER could not agree that it was impossible. If we were to wait for some Bill consolidating all the provisions on compulsory acquisition, we should not see this matter remedied in our lifetimes. Was the Solicitor-General in sympathy with the proposal or not ? He hoped the Minister would agree to reconsider the matter before the Report Stage. Mr. JOYNSON-HICKS said he had received the impression that,

having decided the question as to charges for voluntary acquisition, the Government thought the matter was completed. Would he not at least give an assurance that the negotiations to which he had referred would proceed henceforth on the wider scale? Mr. HAY said the views of The Law Society were known to the Solicitor-General, for they had been in communication with the Government over the Bill and on the point which he had raised. Their views were of importance and they had to consider not only the welfare of the solicitors but also that of the clients.

Sir FRANK SOSKICE said he regretted that he could give no assurance. If the matter were considered it would have to be in a general Bill dealing with compulsory acquisition. The Amendment was negatived. [26th April.

QUESTIONS

Mr. HECTOR HUGHES asked whether the state of the work in His Majesty's Land Registry made it impossible to implement the recommendations of the Land Transfer Committee of 1943 by extending the system of compulsory registration of title to land. The ATTORNEY-GENERAL replied that the Registry was now up to date with its work, but the lack of trained staff prevented a return to the speed which characterised the department before the war. The manpower situation precluded for the present the recruitment of the additional staff which would be required, either fully to restore the pre-war position, or to enable the compulsory areas to be further extended. [24th April.

Brigadier MEDLICOTT asked whether, as the Yorkshire Deeds Registries did not now appear to serve any useful conveyancing purpose to property owners, the Attorney-General would introduce legislation for their abolition. Sir HARTLEY SHAWCROSS agreed with the conclusion of the Tomlin Committee that the system of registration of deeds applying to land in Yorkshire was not as satisfactory as the registration of title in force in London, Middlesex and elsewhere. The extension of the system of registration of title to Yorkshire in substitution for the Deeds Registries, however, presented a number of difficulties, and he could not hold out any hope of such a change in the immediate future. [24th April.

The ATTORNEY-GENERAL stated that the final report of the Leasehold Committee had not yet been received, but he understood that the drafting thereof was in its final stages and the report might be expected within about a month. [24th April.

Sir STAFFORD CRIPPS said he was not aware of any cases of hardship caused by estate duty being levied on notional values at the date of death which could not be realised after probate had been obtained, in some cases leaving the executors and administrators personally liable to repay money borrowed from banks to pay the estate duty. He would, however, look into any cases brought to his notice. [25th April.

Sir STAFFORD CRIPPS said that as every case involved a commitment on the £300 million fund and that sum had to be distributed before 1st July, 1953, he could not extend beyond 1952 the arrangements under which certain owners of building plots, if they began to build a house before 1st January, 1953, might set off the development charge against a claim on the fund. [25th April.

Mr. CHUTER EDE stated that most of the recommendations of the Departmental Committee on Coroners in its report of 1935 could be implemented only by legislation. Although he had not overlooked the desirability of reviewing the law relating to coroners, he could not promise to introduce legislation on this difficult and controversial question in the near future. [27th April.

Mr. BEVAN said he would not introduce legislation giving a right of appeal from local rent tribunals to a central appellate tribunal. [27th April.

Mr. STOREY asked the Minister of Health whether, since neither the court nor the petitioner's solicitor was under any obligation to inform the respondent in an undefended divorce action that a decree *nisi* had been pronounced, he would take steps to make it a function of the Registrar-General to register divorce decrees in the same way as births, deaths, and marriages. Mr. BEVAN replied that a register of all divorces was already kept at the Principal Probate Registry at Somerset House. He could see no reason why the Registrar-General should maintain a duplicate. [27th April.

STATUTORY INSTRUMENTS

Assurance Companies (Amendment) Rules, 1950. (S.I. 1950 No. 643.)

Benzole and Allied Products (Control) (Amendment) Order, 1950. (S.I. 1950 No. 652.)

Cheshire River Board Area Order, 1950. (S.I. 1950 No. 631.)

Coal Distribution (Restriction) Direction, 1950. (S.I. 1950 No. 644.)

Cornwall River Board Constitution Order, 1950. (S.I. 1950 No. 645.)

Fats, Cheese and Tea (Rationing) (Amendment) Order, 1950. (S.I. 1950 No. 640.)

Feeding Stuffs (Rationing) (General Licence) Order, 1950. (S.I. 1950 No. 642.)

Fire Services (Appointments and Promotion) Regulations, 1950. (S.I. 1950 No. 619.)

Flax and Hemp Wages Council (Great Britain) Wages Regulation Order, 1950. (S.I. 1950 No. 630.)

Food (Points Rationing) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 641.)

General Apparel (Distributors' Maximum Prices) Order, 1950. (S.I. 1950 No. 621.)

Hill Cattle Subsidy Payment (England and Wales) Order, 1950. (S.I. 1950 No. 648.)

Hill Sheep Subsidy Payment (England and Wales) Order, 1950. (S.I. 1950 No. 649.)

Hops Marketing Scheme (Amendment) Order, 1950. (S.I. 1950 No. 655.)

Import Duties (Exemptions) (No. 1) Order, 1950. (S.I. 1950 No. 638.)

Draft **Ironstone and Shale Mines** (Locomotives) General Regulations, 1950.

Local Education Authorities (Recoupment) Amending Regulations, 1950. (S.I. 1950 No. 651.)

London Cab Order, 1950. (S.I. 1950 No. 650.)

London Traffic (Prohibition of Waiting) (Leatherhead) Regulations, 1950. (S.I. 1950 No. 637.)

Mersey River Board Area Order, 1950. (S.I. 1950 No. 639.)

Miscellaneous Goods (Maximum Prices) (Amendment No. 9) Order, 1950. (S.I. 1950 No. 658.)

Draft **National Assistance** (Determination of Need) Amendment Regulations, 1950.

National Health Service (General Dental Services) Fees (Amendment) Regulations, 1950. (S.I. 1950 No. 663.)

National Health Service (General Dental Services) Fees (Amendment) (Scotland) Regulations, 1950. (S.I. 1950 No. 657.)

North of Scotland Hydro-Electric Board (Constructional Scheme No. 53) Confirmation Order, 1950. (S.I. 1950 No. 636.)

Nurses (Scotland) Act, 1949 (Appointed Day) Order, 1950. (S.I. 1950 No. 656.)

Paper (Use in Betting Schemes) (Amendment) Order, 1950. (S.I. 1950 No. 647.)

Safeguarding of Industries (Exemption) (No. 5) Order, 1950. (S.I. 1950 No. 628.)

Science Awards Regulations, 1950. (S.I. 1950 No. 627.)

State Scholarships (Mature Students) Amending Regulations No. 3, 1950. (S.I. 1950 No. 625.)

Stopping up of Highways (Anglesey) (No. 1) Order, 1950. (S.I. 1950 No. 660.)

Stopping up of Highways (Essex) (No. 2) Order, 1950. (S.I. 1950 No. 632.)

Stopping up of Highways (Gloucestershire) (No. 2) Order, 1950. (S.I. 1950 No. 633.)

Stopping up of Highways (Kent) (No. 2) Order, 1950. (S.I. 1950 No. 661.)

Stopping up of Highways (Middlesex) (No. 3) Order, 1950. (S.I. 1950 No. 662.)

Stopping up of Highways (West Riding of Yorkshire) (No. 1) Order, 1950. (S.I. 1950 No. 659.)

Technical State Scholarships Amending Regulations No. 2, 1950. (S.I. 1950 No. 626.)

Utility Mark and Apparel and Textiles (General Provisions) (Amendment No. 6) Order, 1950. (S.I. 1950 No. 604.)

Utility Woven Cloth (Wool and Animal Fibre) (Marking, Supply and Manufacturers' Prices) Order, 1950. (S.I. 1950 No. 608.)

Veneer (Birch and Maple) Prices Order, 1950. (S.I. 1950 No. 653.)

Wear and Tees River Board Constitution Order, 1950. (S.I. 1950 No. 646.)

Yarn and Cloth (Wool and Animal Fibre) (Maximum Prices and Charges) (Revocation) Order, 1950.

NOTES AND NEWS

Honours and Appointments

Mr. G. RAYMOND HINCHCLIFFE, K.C., has been appointed Attorney-General of the County Palatine of Durham in succession to Mr. C. B. Fenwick, K.C., who has been appointed a county court judge.

Mr. A. E. JALLAND, K.C., has been appointed Recorder of Preston.

Personal Notes

Mr. A. P. Ames, solicitor, of Frome, and his wife celebrated their golden wedding recently.

Mr. T. I. Clough, solicitor and former Lord Mayor of Bradford, was elected President of the Bradford Y.M.C.A. for a second year on 25th April.

Miscellaneous

At The Law Society's Final Examination held on 13th, 14th and 15th March, 282 candidates passed out of 474. The Council have awarded the following prizes: to G. B. Wright, B.A. Cantab., the Sheffield Prize, value about £38; to H. C. Balch, B.A. Oxon, and L. E. Chapman, the John Mackrell Prize, value about £11. At the trust accounts and book-keeping examination, held on 17th March, 303 candidates passed out of 380.

The price of "Emmet's Notes on Perusing Titles and on Practical Conveyancing," Vol. 2, is 70s. net and not 60s. as stated in last week's issue.

THE SOLICITORS ACTS, 1932 TO 1941

On the 20th January, 1950, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1932, that there be imposed upon JAMES MASON MARTIN of Nos. 4 & 6 Elm Street, Ipswich, in the county of Suffolk, a penalty of £250 to be forfeit to His Majesty and that he do pay to the applicant his costs of and incidental to the application and inquiry. Upon the application of the said James Mason Martin the Committee directed that the filing of the Findings and Orders with the Registrar of Solicitors be suspended during the period allowed for an appeal, and, in the event of any appeal being lodged, until the hearing and determination of such appeal. The order was accordingly filed with the Registrar on the 21st April, 1950.

BOARD OF TRADE BANKRUPTCY DEPARTMENT

The Bankruptcy Department of the Board of Trade has moved from 2 Central Buildings, Matthew Parker Street, London, S.W.1, to Lacon House, Theobalds Road, London, W.C.1. The telephone number at Lacon House is Chancery 4411.

COAL, ELECTRICITY AND GAS ARBITRATION TRIBUNALS

The offices of the Central Valuation Board, the Panel of Arbitrators and the Panel of Referees under the Coal Industry (Nationalisation) Act, 1946, the Electricity Arbitration Tribunal under the Electricity Act, 1947, and the Gas Arbitration Tribunal under the Gas Act, 1948, have been removed to Room 85, Queen Anne's Chambers, Broadway, S.W.1. (Telephone: Whitehall 7010, extension 105.)

Wills and Bequests

Mr. G. E. Nuttall, solicitor, of Milford, left £63,400 (£60,030 net).

Mr. J. H. Tibbits, solicitor, of Warwick, left £12,918 (£12,090 net).

OBITUARY

MR. L. COTMAN

Mr. Leonard Cotman, solicitor, of Preston, died on 23rd April, aged 80. Admitted in 1897, he was the oldest practising solicitor in Preston. He succeeded his father as clerk to the Bamber Bridge magistrates in 1909, and was also clerk to Preston county magistrates from 1941.

MR. W. T. MELLOWS

Mr. William Thomas Mellows, solicitor, of Peterborough, died recently, aged 67. He was admitted in 1904 and was Town Clerk of the city from 1919 to 1930.

MR. M. R. C. SCOTT

Mr. Malcolm Robert Charles Scott, retired solicitor, formerly of New Broad Street, London, E.C.2, died on 23rd April. He was admitted in 1906.

SOCIETIES

LOCAL GOVERNMENT LEGAL SOCIETY: PROVINCIAL MEETING. The first provincial meeting of the Society will be held at Liverpool on Saturday, 20th May, 1950.

Sir Robert Adcock, C.B.E., Clerk of the Lancashire County Council, has kindly agreed to address the Society at the meeting. Members will be welcomed by the Lord Mayor of Liverpool, Alderman J. J. Cleary, and will be the guests of the Liverpool Corporation at lunch at the Exchange Hotel, when the Lord Mayor will again be present. During the afternoon an inspection will be made of the Mersey Tunnel, which is a joint undertaking by the Corporations of Liverpool and Birkenhead.

Members or associate members of the Society who are able to attend should apply at once to the organising Secretary, Mr. S. Holmes, Assistant Town Clerk, Municipal Buildings, Dale Street, Liverpool, 2, in any case not later than the 13th May. Members requiring hotel accommodation should indicate their requirements to Mr. Holmes.

The annual general meeting of the UNITED LAW SOCIETY was held in Gray's Inn Common Room on Monday, 24th April, 1950. The Chairman was Mr. Henry Everitt. The following were elected as officers of the Society for the year 1950–51: Chairman, Mr. C. Hardinge Pritchard; Vice-Chairman, Miss F. L. Berman; Treasurer, Mr. F. H. Butcher; Secretary, Mr. J. R. Bracewell; Assistant Secretary, Mr. A. Garfitt; Reporter, Mr. J. N. Collins; Members of the Committee, Mrs. Megan Bracewell, Mr. D. N. Keating and Mr. M. D. Sherrard; Auditors, Mr. O. T. Hill and Mr. J. C. Knight.

THE UNION SOCIETY OF LONDON, which meets in the Common Room, Gray's Inn, at 8.0 p.m., announces the following subjects for debate in May, 1950: Wednesday, 10th May, "That the time is ripe for a fresh attempt to reach agreement with Russia." Friday, 19th May (Joint debate with the Hardwicke Society in the Niblett Hall, Inner Temple, at 8.0 p.m.), "That this House would rather lose its morals than its morale." On Wednesday, 24th May, an extraordinary general meeting will be held.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).